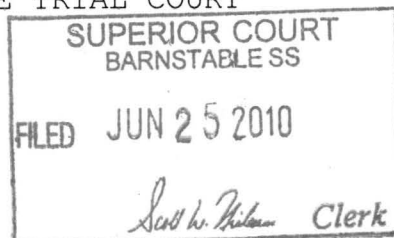


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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT
 OF THE TRIAL COURT



COMMONWEALTH OF MASSACHUSETTS

VS.

DOCKET No. 48590

CHARLES ROBINSON,

Defendant

MOTION HEARING
 BEFORE THE HONORABLE GARY A. NICKERSON

APPEARANCES:

BRIAN S. GLENNY, ESQUIRE
 First Assistant District Attorney
 Cape & Islands Division
 For the Commonwealth.

JOSEPH KROWSKI, ESQUIRE
 30 Cottage Street
 Brockton, MA 02301
 For the Defendant.

BARNSTABLE, MASSACHUSETTS
 Courtroom 1
 June 18, 2010

P R O C E E D I N G S

THE CLERK: Commonwealth versus Charles Robinson. There's a motion.

MR. KROWSKI: Did you say Charles Robinson?

THE CLERK: Yes.

MR. KROWSKI: May I approach the side bar on this one, your Honor? It's an ex-parte motion for -- I put it on today because I happened to be down here on the other -- on the Vacher matter.

THE COURT: Well, I have no problem with you marking it up. I have no difficulty with that. Go ahead.

MR. KROWSKI: May I approach? It's an ex-party motion on --

THE COURT: I understand what it is, but let's do it on the record.

MR. KROWSKI: Well, I guess the motion speaks for itself. I know you have some knowledge of the case and the hearings that were interrupted because of Mr. Robinson's mental state.

THE COURT: When is this matter going to be on the court calendar and get reached?

MR. KROWSKI: I'm sorry, your Honor?

THE COURT: When are we going to put this thing on the calendar and reach it? It seems to me that the present motion is prompted by the fact that nothing was marked up a year ago.

MR. KROWSKI: You might remember, we had an issue about funds because of the amount of money. So, I had to come back to

1 your Honor --

2 THE COURT: And --

3 MR. KROWSKI: I'm just the messenger here. I'm not the
4 vendor. And I know that there has been some issue between the
5 rate and the bill. But I was in chambers last year with
6 Mr. Glenny, and I had no problem about explaining that, about
7 the funds; and that my expert's payment voucher wasn't honored.

8 And then there was an issue -- I think it's on the
9 endorsement of the motion. And so, I came back and explained
10 it. And I finally came back; and your Honor assented because --
11 to my request because I think you thought the amount of money
12 was on the large side.

13 THE COURT: \$32,675.

14 MR. KROWSKI: How much?

15 THE COURT: \$32,675 to date.

16 MR. KROWSKI: I understand, your Honor.

17 THE COURT: But here's my -- try my concern.

18 MR. KROWSKI: Yes?

19 THE COURT: As of April of '09 --

20 MR. KROWSKI: Yes.

21 THE COURT: -- you have got in your hand a fresh current
22 report by the doc saying, He's competent. Let's go.

23 MR. KROWSKI: Yes.

24 THE COURT: Nothing happens.

25 MR. KROWSKI: Yes.

1 THE COURT: And now a year later, the doc says, you know,
2 That's a year ago. Now I have got to make sure he's competent
3 today.

4 MR. KROWSKI: I'm not sure what happened there between -- I
5 know he tried to contact me, and I tried to contact him. And I
6 wasn't aware that there was going to be another request for
7 money.

8 I'm ready, willing and able to go because, you know, the
9 doctor has already testified once. I would be ready based upon
10 any new reports to go as soon as the Court requires it. He
11 tells me he has to do an updated evaluation of Mr. Robinson.

12 THE COURT: Have you seen this letter from Mr. Robinson?

13 MR. KROWSKI: I believe I have a copy of it.

14 THE COURT: Do you? Mr. Glenny, do you wish any input in
15 this matter at this time?

16 MR. KROWSKI: Well, he has been in and out of Bridgewater.
17 I think his medications the past several months that I have been
18 dealing with him, he's lucid. I can communicate with him.

19 THE COURT: Okay. Mr. Glenny, do you have any concerns or
20 input at this time?

21 MR. GLENNY: Well, the only thing would be is -- my
22 understanding of where we are right now is he's technically been
23 found incompetent. I don't know that this Court has made a
24 ruling that he's competent yet. That needs to be done at some
25 point before we can go back to whatever we're going to do:

1 Start a new one or continue from what we did before. Whatever
2 it is that we're going to do, there has to be a finding by the
3 Court first that he's competent.

4 THE COURT: Assume arguendo he's competent. What is it you
5 want to do from there, Mr. Krowski?

6 MR. KROWSKI: Set up a hearing ASAP, your Honor.

7 THE COURT: On the old motion or --

8 MR. KROWSKI: The old motion. And there's a unique little
9 twist to this. There has to be the determination that he is
10 competent to participate in the motion to determine whether he
11 was competent at the time of trial.

12 THE COURT: Understood. Assume he's competent now,
13 today --

14 MR. KROWSKI: Yes.

15 THE COURT: -- are you going to file a new motion? Or are
16 you going to rely on your old motion?

17 MR. KROWSKI: I probably will rely on my old motion. But
18 it might have to be updated because -- there are two things that
19 have happened here that you see in my motion or in the doctor's
20 letter.

21 THE COURT: Here's where we are. To be perfectly blunt, I
22 have got a runaway situation as far as the expenses.

23 MR. KROWSKI: I --

24 THE COURT: And I think it's beyond what somebody of means
25 would tolerate quite frankly; and therefore, I think it's a

1 legitimate concern of the Court at this stage that this is in
2 the context of an indigent individual. It is well beyond what a
3 person of means would tolerate.

4 I think at this moment for your planning purposes, you
5 should assume the gentleman is competent --

6 MR. KROWSKI: Yes.

7 THE COURT: -- as of today. You should, therefore, file
8 whatever pleadings in the way of a motion for a new trial you
9 want this Court to act upon.

10 MR. KROWSKI: Yes.

11 THE COURT: Once those pleadings are filed, I assume it
12 will be in the form of either an amended motion or a whole new
13 motion for a new trial.

14 When they're filed, the Clerk will send them out to
15 Mr. Glenny so that he has an opportunity to respond within 30
16 days by way of an initial opposition.

17 And I assume the initial opposition is, Judge, we don't
18 need a hearing on this because -- or it's going to take a
19 hearing. Let's go forward.

20 And then if the Commonwealth's position is, We have to have
21 a hearing anyway, then I assume the judge is automatically going
22 to set up a hearing.

23 If the Commonwealth says, We don't need a hearing, then the
24 judge has a determination to make: Is this one of the motions
25 for a new trial that can be resolved short of a hearing under

1 the provision in Rule 30 that allows the judge to do that. If
2 it's going the hearing route, we're going to set a date.

3 And then and only then is the doctor going to be authorized
4 to go back out and see this guy. Because at ten thousand
5 dollars a cycle with this doctor, I'm not going send him out
6 today, quite frankly, because all I'm doing is spending money;
7 and we'll still be back a year later worrying about pleadings.

8 When the pleadings are in order such that it's appropriate
9 to schedule a hearing, then the doc gets paid and sent out there
10 to do the competency. We get the report. And I assume on the
11 morning of the hearing, the first order of business is, Is this
12 guy competent? Yes.

13 The second order of business is, What evidence do we need,
14 and what are you presenting for your new trial? Is that a fair
15 way to proceed?

16 MR. GLENNY: The only part that I'm a little confused about
17 at this point would be why this doctor is the person that would
18 be conducting the examination to determine whether he's
19 competent or not; when if he was found incompetent by the Court,
20 he should have been sent, I would assume, someplace that's under
21 the control of the state where they would either say he is or he
22 isn't competent.

23 I think we need to have that preliminary discussion done
24 by -- whether it's Bridgewater or Taunton or whatever they --
25 wherever they sent him on that incompetency finding by the Court

1 that we had originally. And then I'm curious as to what
2 information will I be privy to for that hearing? For the
3 hearing on competency?

4 THE COURT: Yeah.

5 MR. GLENNY: Competency for the hearing on competency. In
6 other words, what information will I have available to me to
7 determine whether he's competent today?

8 THE COURT: Yeah, that's --

9 MR. GLENNY: Not from then, but for today. And after that
10 determination is made --

11 MR. KROWSKI: That's a given.

12 THE COURT: That's a given, if we have a concern about his
13 incompetency as of today. I have the doctor's report from
14 April of 2009 in hand.

15 MR. GLENNY: Is that the Defendant's doctor?

16 THE COURT: Yes. The doctor says he's competent today,
17 April '09. As far as I'm concerned, as long as this is the same
18 status come the date of the hearing, there is not an issue.

19 MR. GLENNY: But what about --

20 THE COURT: If the doctor -- if we arrive at the morning of
21 the hearing and the doc says, He's not competent, and you want
22 to ship him for a determination on competency, I would assume
23 that's in the cards.

24 But if we arrive at the morning of the hearing and the doc
25 here says, He's competent, do I have any basis to say he's not

1 competent that day?

2 MR. GLENNY: I think we do. I think we have already sent
3 him off being incompetent. And I think there should be a doctor
4 or a hospital where he was sent to determine whether he is
5 competent. I mean, we stopped the hearing because the Court had
6 questions of his competency.

7 MR. KROWSKI: Your Honor, that's academic at this point.
8 He was sent from here to Bridgewater. And he now and for the
9 past eight or nine months anyhow, maybe longer, has been
10 stabilized with meds at Norfolk. He is currently at Norfolk.
11 So, he's in general population, being treated with prescribed
12 medications.

13 So, since the date of that report that you have from Doctor
14 Rosmarin -- and all the times I've been able to communicate with
15 him on the phone from the prison, he's been lucid.

16 Although that was one of the problems. He has always
17 appeared lucid; but on the date that he was found incompetent by
18 a psychologist in this court, he had appeared to me to be lucid
19 that day, too, until halfway through the hearing, he started to,
20 I guess, decompensate.

21 And the court officers noticed the same thing when he was
22 the only person in the lock-up. So, the court officers brought
23 that to your attention, as well as I did.

24 Since that time, Mr. Robinson -- and the record will
25 show -- he has been in and out of Bridgewater a number of times

1 for evaluations. The whole history of this case has been where
2 is -- where is it -- where in the calendar is it that he's going
3 to be back in Bridgewater?

4 This is the longest stretch of lucidity that he has had.
5 And I base it on my conversation with him, that April of last
6 year's report and the conversations I have had with Doctor
7 Rosmarin; and the fact that he seems to be more understanding of
8 what my role is and what our defense is at this time, more so
9 than at any other point in my representation of him.

10 MR. GLENNY: My suggestion -- I'm not disagreeing that he's
11 not competent. I don't know. But I would think that if the
12 Court found him to be incompetent, why are we relying on the
13 Defendant's doctor --

14 THE COURT: I sent him for an exam, but let me just see
15 what we have got for a return out of Bridgewater.

16 THE CLERK: There's another package of reports, Judge.

17 THE COURT: Yeah, there should be a July 30th, 2004 docket
18 entry --

19 THE CLERK: She is going to get that.

20 THE COURT: -- that suggests that Leslie Bryant, Phd. at
21 Bridgewater, entered a report. And it looks like it generated a
22 16B. So, I assume it was not competent.

23 THE CLERK: Also on October 17th, 2005, a 15B evaluation.

24 THE COURT: October 17th?

25 THE CLERK: Yeah, 2005. That was an evaluation that we

1 received. Amanda just went down to get that. This is what you
2 don't have on your docket.

3 THE COURT: Where is he presently lodged? Where is he
4 presently lodged?

5 MR. KROWSKI: The last call I had from him the last week or
6 two weeks ago was Norfolk.

7 THE COURT: Why isn't Mr. Glenny's concern legitimate? Why
8 shouldn't we set a date, have him habaed in? Or simply order by
9 this Court that the clinician go to the institution and perform
10 a 15A as to competency?

11 MR. KROWSKI: I have no problem with that, your Honor.

12 THE COURT: If the clinician says a further examination is
13 warranted, then we bring him in for a hearing. And I assume --

14 MR. KROWSKI: I would think that if they noticed
15 anything --

16 THE COURT: -- he goes to Bridgewater for an in-depth
17 interview. If the clinician says a further hearing isn't
18 warranted, then I assume we're on the path to getting the
19 pleadings in order. And if you want your doc to re-up things,
20 re-up it and then come in for a hearing.

21 MR. GLENNY: But if he's already been sent for a competence
22 because he was found to be incompetent -- so, the clinician's
23 already seen him. This is a long time ago.

24 THE COURT: This is a long time ago.

25 MR. GLENNY: No, I agree. But somebody somewhere should

1 have said, He is now competent, or he is not now competent.
2 Because he would have been sent for that reason. And if they
3 say he is competent -- I mean, we may have to reevaluate that.

4 THE COURT: Well, no matter what they say -- let's say they
5 say he is incompetent, or they say he is competent. The last
6 look and see we have got from anybody is March of '06 on the
7 state side.

8 MR. GLENNY: See, I don't know what the last time they
9 tried to find that out was.

10 THE COURT: March of '06.

11 MR. KROWSKI: Your Honor, this is one of the inmates that
12 they keep a particular eye on. The reports are ripe with guards
13 making observations. It all started, I think, when his first
14 commitment was from Souza Baranowski where they heard certain
15 conversations he is having with himself in the cellblock and all
16 kinds of things.

17 So, he had been in and out of Bridgewater based upon
18 observations made by correctional officers. So, I know that the
19 system keeps a very close eye on Mr. Robinson's mental state.
20 And the records -- and there are volumes and volumes and volumes
21 of records where it indicates that when he's at an institution
22 that they keep an eye on him.

23 So, I suspect that there must be a record showing that he
24 has been found competent to be back in general population
25 somewhere, either in the Bridgewater or Norfolk records.

1 THE COURT: It appeared the last actual report on the state
2 side dealing with competency appears to be October 17th, 2005 by
3 Doctor Jane Prouse. And that report is guarded, but finds him
4 competent. And then I think from there, we slipped into your
5 private doctor.

6 The wiser thing may be to start up with a 15A. Let me
7 order a 15A today.

8 MR. GLENNY: And just so again we're clear, the 15A is just
9 as to his present --

10 THE COURT: Present competency.

11 MR. GLENNY: -- state, right?

12 THE COURT: That's all we're dealing with. On the 15A.
13 The Clerk is going to reach out to Doctor Maynard or whoever is
14 available today with the question of, Do you prefer to go to
15 Norfolk, or do you want him habaed in here for the 15A?

16 If it's a habe in, you two folks are going to have to get a
17 date that's convenient. We'll get that done. And I think
18 that's the first step.

19 I'm not going to act -- I'm not taking -- I'm not denying
20 your request for funds.

21 MR. KROWSKI: Right. I understand, Judge.

22 THE COURT: I'm simply not acting on it today. I don't
23 think it's ripe. I think we have spun around too many cycles on
24 this issue.

25 MR. KROWSKI: Oh, we've had a lot of false starts. I

1 agree, Judge. But I'll be ready to come down here, and then Mr.
2 Robinson would be back at Bridgewater. So --

3 THE COURT: Let's get a 15A done. If the 15A says, Further
4 exam, then I assume he goes. If the 15A says, No reason for
5 further exam, then it's time to get the pleadings squared away
6 first; then a look and see for a hearing date.

7 Once we get a hearing date set, knowing your schedule,
8 Mr. Krowski -- I'm sure you're going to need some lead time.
9 You have a very hectic schedule. And so does Mr. Glenny these
10 days. In that lead time, then we can put your doctor back to
11 work.

12 MR. KROWSKI: Fine.

13 THE COURT: Fair enough?

14 MR. KROWSKI: Fair enough.

15 MR. GLENNY: Fair enough.

16 THE COURT: Mr. Glenny, appropriate? All right. Let's go
17 in that direction. I think that's the better course.

18 MR. KROWSKI: Will we be notified after today, or today, as
19 to whether it's going to be in-house at --

20 THE CLERK: If you want to wait a few minutes, we could
21 call right now. I think the doctor is over there.

22 THE COURT: Let me ask a question about where this case may
23 wander from here. Let's assume the gentleman is competent. You
24 get your pleadings in order, and we start moving toward a
25 hearing date.

1 I gather the thrust of your position, Mr. Krowski, is that
2 the gentleman was not competent during the trial?

3 MR. KROWSKI: That's correct.

4 THE COURT: Are you going to need time for a doctor to look
5 at this or anything? What's going to happen on the
6 Commonwealth's end of this case, assuming the dominoes line up
7 in that fashion?

8 MR. GLENNY: Well, I think we need to see exactly -- I know
9 the last time, I believe we had a doctor available. I'm not
10 100 percent sure. It was a while ago. But we were progressing
11 through, ready -- we were going to do the motion. We weren't
12 asking for a continuance.

13 I would have to check to see -- that's why I'm asking about
14 what materials are going to be available for the Commonwealth to
15 be able to use. Because if there's something in one of these
16 reports that we get that suddenly relates back to something we
17 didn't know about from before, that may cause us to have to do
18 something.

19 MR. KROWSKI: I was going to tell Mr. Glenny that. There
20 is something new. There is a witness. At the time of the last
21 hearing, there was some missing tapes. Mr. Robinson had
22 audiotaped himself. He was a rapper. We had this CD that he
23 made, which was not a very good CD; and he also had made some
24 microcassettes.

25 They got mislaid. After the hearing -- sometime later, I

1 found the tapes, the microcassettes. And at my own expense, I
2 had them from the microcassette placed onto a CD. Then the CD
3 was transcribed.

4 And that's the six hours of tapes that you see. So, I will
5 make all of that available to Mr. Glenny. That is something new
6 that I was -- I did not have at the last hearing.

7 I thought that the tapes had gone astray someplace else.
8 And I found them in my office. As soon as I found them, I got
9 them out to Doctor Rosmarin. What I would have to do is
10 authenticate the tape with one witness, and then have Doctor
11 Rosmarin comment on the tapes.

12 MR. GLENNY: The way we were proceeding last time -- you
13 know, my suggestion would be, as soon as I have that information
14 available that he's competent for this proceeding, you know,
15 we'll be able to make those determinations, I would think, in
16 pretty short order.

17 THE COURT: Well, it would seem to me -- again, thinking
18 out loud as to where we're going here -- if the indication on
19 the 15A is, This guy is competent, then Mr. Krowski is going to
20 have a reasonable amount of time to freshen up his pleadings.

21 Once the pleadings hit, I said they would go out to you for
22 30 days. That might be the juncture at which not only do you
23 say, Yes, this needs a hearing -- No, it doesn't, and here is
24 why -- but it might also be the juncture of, Yes, it needs a
25 hearing; and I need a discovery period for the following

1 reasons. So, before we go setting any dates, discovery issues
2 are right at the forefront.

3 And then, you know, as I say, I'm not going to unleash
4 Doctor Rosmarin until we are focused on a date.

5 MR. KROWSKI: I agree, your Honor.

6 THE COURT: At the rate it's been billed at, the government
7 can't stand or tolerate the situation as it is today. I'm not
8 going to cut you off, but I am going to try to reign you in.

9 MR. KROWSKI: I understand. I think the more that I think
10 about the tapes that were discovered -- that had been lost and
11 were recovered, it probably requires some supplementation, if
12 not even a new motion, on a Rule 30. But I'll file the
13 appropriate pleadings.

14 THE COURT: Okay.

15 MR. KROWSKI: And I'll give whatever discovery that
16 Mr. Glenny is entitled to.

17 THE COURT: All right. Fair enough.

18 MR. GLENNY: Thank you.

19 MR. KROWSKI: Thank you, your Honor.

20 (Whereupon proceedings conclude.)
21
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23
24
25

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